

THE LAW OFFICES OF

Special | Hagan

New Address

88-08 JUSTICE AVENUE APT. 16I

ELMHURST, NEW YORK 11373

P: (917) 337-2439

SPECIAL@HAGANLAWOFFICES.NET

Monday, May 2, 2022

VIA ECF & VIA EMAIL

Honorable District Judge John P. Cronan
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street, Courtroom 20C
New York, New York 10007-1312

Re: Kaye v. Health and Hospitals Corporation et. al.
18-CV-12137(JPC)(JLC)

Dear Honorable District Judge Cronan:

Plaintiff respectfully writes in response to Defense Counsel's letter dated May 2, 2022. (ECF Dkt. 240) Counsel was put on notice during the course of 11 depositions that the May 3, 2019 complaint was the operative complaint. (ECF. Dkt. 29) However, if the operative complaint was not clear before Plaintiff's deposition, it was made unequivocally so on that date. (Exhibit 1: Excerpts from the Deposition of Melissa Kaye, M.D. pages 195-199):

MS. CANFIELD:

Let me make sure that I have the operative complaint. This is the complaint I have. It's dated May 30th. I mean, it's dated April 30th, but it was filed on May 2, 2019. And the copy that I have –the hardcopy at my desk is dated April 30th) (Exhibit 5: p. 197:8-13)

MS. HAGAN:

Well, actually, the one that was filed – one of the versions that was filed with the Court was filed on April 30, 2019. And it had ECF Docket 22.

MS. CANFIELD:

The one I'm working from is Docket No. 25-1

MS. HAGAN:

Okay. Let's see what this one is. Because there should be another one that was actually filed on May 3rd. There should be one that's dated May 3rd. That's the one that you're not showing. (p.197:8-25)

MS. CANFIELD:

THE LAW OFFICES OF

Special | Hagan

New Address

88-08 JUSTICE AVENUE APT. 16I

ELMHURST, NEW YORK 11373

P: (917) 337-2439

SPECIAL@HAGANLAWOFFICES.NET

Thank you. And apologies to everyone for sharing the wrong complaint that appears to be the –I don't know if that was a proposed First Amended Complaint, but it's not the one that was eventually filed on the docket. I do have the proper document now. It's ECF No. 29. It was filed on May 3, 2019. (Exhibit 1: 198:24-25-199:1-5)

Despite the current flurry of correspondence, at no time has Defense Counsel filed an objection to the May 3, 2019 Complaint. (ECF. Dkt. 29) Plaintiff posits that the reason for this failure to object is because of this Court's order on May 2, 2019 which granted Plaintiff leave to re-file on or by May 3, 2019. (ECF Dkts. 27 and 28) Defendants' position is further contradicted by the fact that Counsel filed a declaration that stated that Exhibit A was the May 3, 2019 Complaint, but that eventually attached the April 30, 2019 Amended Complaint that was an exhibit and proposed complaint filed with the Court. (Exhibits 2 and 3: Defendants' Declaration in Support of their Application for Summary Judgment.; and Defendants' Exhibit A)

In closing, I apologize to the Court for any further inconvenience. In similar circumstances, Court in this Circuit have dismissed motions for summary judgment with prejudice. However, due to the number of complaints and filings in this matter, Plaintiff is simply seeking two weeks' time to respond from the Defendants' filing based on the correct and operative complaint. (ECF Dkt. 29)

Respectfully submitted,

/s/

Special Hagan, Esq.
Attorney for Melissa Kaye, MD

Cc: Donna Canfield, Esq.
Counsel for Defendants